

§ 51.3

and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election.” (Section 14(c)(1)).

§ 51.3 Delegation of authority.

The responsibility and authority for determinations under section 5 have been delegated by the Attorney General to the Assistant Attorney General, Civil Rights Division. With the exception of objections and decisions following the reconsideration of objections, the Chief of the Voting Section is authorized to act on behalf of the Assistant Attorney General.

§ 51.4 Date used to determine coverage; list of covered jurisdictions.

(a) The requirement of section 5 takes effect upon publication in the FEDERAL REGISTER of the requisite determinations of the Director of the Census and the Attorney General under section 4(b). These determinations are not reviewable in any court. (Section 4(b)).

(b) Section 5 requires the preclearance of changes affecting voting made since the date used for the determination of coverage. For each covered jurisdiction that date is one of the following: November 1, 1964; November 1, 1968; or November 1, 1972.

(c) The appendix to this part contains a list of covered jurisdictions, together with the applicable date used to determine coverage and the FEDERAL REGISTER citation for the determination of coverage.

§ 51.5 Termination of coverage (bail out).

A covered jurisdiction or a political subdivision of a covered State may terminate the application of section 5 (or bail out) by obtaining the declaratory judgment described in section 4(a) of the Act.

§ 51.6 Political subunits.

All political subunits within a covered jurisdiction (e.g., counties, cities, school districts) are subject to the requirement of section 5.

28 CFR Ch. I (7–1–08 Edition)

§ 51.7 Political parties.

Certain activities of political parties are subject to the preclearance requirement of section 5. A change affecting voting effected by a political party is subject to the preclearance requirement:

(a) If the change relates to a public electoral function of the party and

(b) If the party is acting under authority explicitly or implicitly granted by a covered jurisdiction or political subunit subject to the preclearance requirement of section 5.

For example, changes with respect to the recruitment of party members, the conduct of political campaigns, and the drafting of party platforms are not subject to the preclearance requirement. Changes with respect to the conduct of primary elections at which party nominees, delegates to party conventions, or party officials are chosen are subject to the preclearance requirement of section 5. Where appropriate the term “jurisdiction” (but not “covered jurisdiction”) includes political parties.

§ 51.8 Section 3 coverage.

Under section 3(c) of the Act, a court in voting rights litigation can order as relief that a jurisdiction not subject to the preclearance requirement of section 5 preclear its voting changes by submitting them either to the court or to the Attorney General. Where a jurisdiction is required under section 3(c) to preclear its voting changes, and it elects to submit the proposed changes to the Attorney General for preclearance, the procedures in this part will apply.

§ 51.9 Computation of time.

(a) The Attorney General shall have 60 days in which to interpose an objection to a submitted change affecting voting.

(b) Except as specified in §§ 51.37, 51.39, and 51.42 the 60-day period shall commence upon receipt by the Department of Justice of a submission.

(c) The 60-day period shall mean 60 calendar days, with the day of receipt of the submission not counted. If the final day of the period should fall on a Saturday, Sunday, any day designated

Department of Justice

§51.14

as a holiday by the President or Congress of the United States, or any other day that is not a day of regular business for the Department of Justice, the Attorney General shall have until the close of the next full business day in which to interpose an objection. The date of the Attorney General's response shall be the date on which it is mailed to the submitting authority.

§51.10 Requirement of action for declaratory judgment or submission to the Attorney General.

Section 5 requires that, prior to enforcement of any change affecting voting, the jurisdiction that has enacted or seeks to administer the change must either:

(a) Obtain a judicial determination from the U.S. District Court for the District of Columbia that denial or abridgment of the right to vote on account of race, color, or membership in a language minority group is not the purpose and will not be the effect of the change or

(b) Make to the Attorney General a proper submission of the change to which no objection is interposed.

It is unlawful to enforce a change affecting voting without obtaining preclearance under section 5. The obligation to obtain such preclearance is not relieved by unlawful enforcement.

[52 FR 490, Jan. 6, 1987; 52 FR 2648, Jan. 23, 1987]

§51.11 Right to bring suit.

Submission to the Attorney General does not affect the right of the submitting authority to bring an action in the U.S. District Court for the District of Columbia for a declaratory judgment that the change affecting voting does not have the prohibited discriminatory purpose or effect.

§51.12 Scope of requirement.

Any change affecting voting, even though it appears to be minor or indirect, returns to a prior practice or procedure, ostensibly expands voting rights, or is designed to remove the elements that caused objection by the Attorney General to a prior submitted change, must meet the section 5 preclearance requirement.

§51.13 Examples of changes.

Changes affecting voting include, but are not limited to, the following examples:

(a) Any change in qualifications or eligibility for voting.

(b) Any change concerning registration, balloting, and the counting of votes and any change concerning publicity for or assistance in registration or voting.

(c) Any change with respect to the use of a language other than English in any aspect of the electoral process.

(d) Any change in the boundaries of voting precincts or in the location of polling places.

(e) Any change in the constituency of an official or the boundaries of a voting unit (e.g., through redistricting, annexation, deannexation, incorporation, reapportionment, changing to at-large elections from district elections, or changing to district elections from at-large elections).

(f) Any change in the method of determining the outcome of an election (e.g., by requiring a majority vote for election or the use of a designated post or place system).

(g) Any change affecting the eligibility of persons to become or remain candidates, to obtain a position on the ballot in primary or general elections, or to become or remain holders of elective offices.

(h) Any change in the eligibility and qualification procedures for independent candidates.

(i) Any change in the term of an elective office or an elected official or in the offices that are elective (e.g., by shortening the term of an office, changing from election to appointment or staggering the terms of offices).

(j) Any change affecting the necessity of or methods for offering issues and propositions for approval by referendum.

(k) Any change affecting the right or ability of persons to participate in political campaigns which is effected by a jurisdiction subject to the requirement of section 5.

§51.14 Recurrent practices.

Where a jurisdiction implements a practice or procedure periodically or